

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
CIVIL ACTION NO: 5:21-cv-00044

CUMIS INSURANCE SOCIETY, INC.,)

Plaintiff,)

v.)

NATIONWIDE MUTUAL FIRE)
INSURANCE COMPANY,)

Defendant.)
_____)

**NOTICE OF REMOVAL
(DIVERSITY OF CITIZENSHIP)**

28 U.S.C. § 1441(b)

Case No. 20 CVS 14302 (Wake County)

COMES NOW the Defendant Nationwide Mutual Fire Insurance Company (“Nationwide”), by and through its counsel in the above-captioned action, and without waiving any and all defenses, hereby gives notice pursuant to 28 U.S.C. §§ 1441 and 1446(a) that it has removed the action entitled, “Cumis Insurance Society, Inc., plaintiff versus Nationwide Mutual Fire Insurance Company, defendant,” from the General Court of Justice, Superior Court Division, Wake County, North Carolina, Case No. 20 CvS 14302 (the “State Court Action”), to the United States District Court for the Eastern District of North Carolina. A copy of this Notice of Removal is being filed with the Clerk of the General Court of Justice, Superior Court Division, Wake County, North Carolina, in order to effect removal pursuant to 28 U.S.C. § 1446(b). Pursuant to 28 U.S.C. § 1446(d), the State Court Action shall proceed no further unless and until this case is remanded.

Grounds for Removal

1. Plaintiff filed the present action seeking damages for breach of contract and equitable subrogation against Defendant. Specifically, Plaintiff alleges that it issued a policy of

insurance that paid benefits to its insured, Local Government Federal Credit Union (“LGFCU”). Plaintiff alleges that Defendant Nationwide issued a policy of insurance that had primary coverage for the same benefits that Plaintiff paid to LGFCU. Plaintiff seeks reimbursement from Defendant Nationwide of the amounts that it paid to LGFCU under its policy. In this action, Plaintiff asserts two claims against Defendant: (1) breach of contract and equitable subrogation; and (2) unfair trade practices. Plaintiff seeks reimbursement of the amounts it paid to LGFCU, treble damages, interest, attorneys’ fees and costs.

2. The Complaint in this action alleges that the Plaintiff is entitled to recover \$2,165,070.58 from the Defendant. (Complaint, ¶ 45) It is also alleged that Plaintiff is entitled to receive treble damages under N.C. Gen. Stat. § 75-1.1. Accordingly, the amount in controversy in this action exceeds \$75,000.

3. The State Court Action was originally commenced on December 15, 2020 in the Superior Court Division of Wake County, North Carolina, as Case No. 20 CvS 14302.

4. The Plaintiff forwarded the Summons and Complaint to the North Carolina Commissioner of Insurance and the Commissioner received same on or about December 29, 2020. The Summons and Complaint were transmitted by the Commissioner of Insurance to Nationwide and received by Defendant on January 11, 2021.

5. Attached hereto as Exhibit A is a copy of the Summons and Complaint filed with the Clerk of Superior Court for Wake County.

6. According to the Complaint, Plaintiff is a foreign insurance company with its principal place of business located in Wisconsin. (Complaint, ¶ 1)

7. Defendant Nationwide is an insurance company duly organized and existing under the laws of the State of Ohio, with its principal place of business also located in Ohio.

(Complaint, ¶ 2) Therefore, there is complete diversity of citizenship between the parties in this action.

8. This Notice of Removal is being filed within thirty (30) days of the date that the Civil Summons and Complaint were first received by the Defendant, pursuant to 28 U.S.C. § 1446(b)(1).

9. This case is removable under 28 U.S.C. § 1332 (“Diversity of Citizenship”) because there is: (i) complete diversity of citizenship of the parties, and (ii) the amount in controversy exceeds the sum or value of \$75,000, exclusive of costs and interest.

10. Copies of this Notice are being provided to all adverse parties and a copy hereof is being filed with the Clerk of Superior Court for Wake County, all in accordance with the provisions of 28 U.S.C. § 1446(d).

WHEREFORE, Defendant Nationwide Mutual Fire Insurance Company gives notice of the removal of the above-captioned action from the General Court of Justice, Superior Court Division of Wake County, North Carolina to the United States District Court for the Eastern District of North Carolina.

This the 28th day of January, 2021.

/s/ David L. Brown

David L. Brown

N.C. State Bar No. 18942

Martha P. Brown

N.C. State Bar No. 20063

GOLDBERG SEGALLA LLP

701 Green Valley Road, Suite 310

Greensboro, North Carolina 27408

Telephone: (336) 419-4900

Facsimile: (336) 419-4950

Email: mpbrown@goldbergsegalla.com

Attorney for Defendant

Nationwide Mutual Fire Insurance Company

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of January, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the registered participants as identified on the Notice of Electronic Filing (NEF).

I hereby further certify that a true and correct copy of the foregoing was served upon the following on the 28th day of January, 2021, via First Class mail, postage prepaid:

Walter E. Brock, Jr.
Andrew P. Flynt
Young Moore and Henderson, P.A.
Post Office Box 31627
Raleigh, NC 27622
Walter.brock@youngmoorelaw.com
Andrew.flynt@youngmoorelaw.com
Attorneys for Plaintiff

This the 28th day of January, 2021.

GOLDBERG SEGALLA LLP

/s/ David L. Brown
David L. Brown
N.C. State Bar No. 18942
Martha P. Brown
N.C. State Bar No. 20063
701 Green Valley Road, Suite 310
Greensboro, NC 27408
Telephone: 336.419.4900
Facsimile: 336.419.4950
Email: mpbrown@goldbergsegalla.com

Attorney for Defendant
Nationwide Mutual Fire Insurance Company